

### REMARKS

Reconsideration of the application is requested in view of the above amendments and the following remarks. Claims 22, 28, 32 and 37 have been canceled without prejudice or disclaimer. Claim 22 has been amended to include the allowable limitations of canceled claim 22. Claim 29 has been amended to include the allowable limitations of claim 37 and intervening claim 32. Claims 1-16 and 51 have been allowed. Claims 17-21, 23-27, 29-31 and 33-36 should now be in condition for allowance. No new matter has been added.

#### § 102 Rejections

Claim 29, 30 and 32-34 were rejected under 35 U.S.C. § 102(b) as being anticipated by Wade (US 5,782,231). Applicants respectfully traverse this rejection. However, in an effort to expedite allowance of this application, Applicants have amended claim 29 to include the allowable limitations of claim 37 and intervening claim 32. Therefore, this rejection is moot. Applicants do not concede the correctness of this rejection.

Claim 38 was rejected under 35 U.S.C. § 102(b) as being anticipated by Hawkinson (US 5,542,407). Applicants respectfully traverse this rejection.

Hawkinson discloses with reference to Figure 3 a fireplace 110 that includes a combustion chamber 112 defined by an upper wall 114, a lower wall 116, a pair of sidewalls 118 (only one of which can be seen) and a pair of glass panes 120. A second set of glass panes 122 are spaced apart from the panes 120 to define air passageways 124. The air passageways 124 are in fluid communication with an air inlet vent 126. This configuration provides for inlet air to be drawn through the vent 126 and the passageways 124 to the bottom of the combustion chamber 112 where it supplies combustion air to the burner assembly 126.

The rejection, as best understood, contends that the sidewalls 118 of Hawkinson are a combustion chamber and that the combustion chamber is positioned inside of a combustion air enclosure. The rejection further contends that Hawkinson discloses a glass panel 122 secured to the combustion chamber enclosure and notes that there are chambers 124 defined by this arrangement.

Applicants submit that Hawkinson, even as applied in the rejection, fails to disclose every limitation of claim 38. The glass panel 122 is secured to those panels (e.g., panel 116) that define the chambers 124 providing combustion air, which panels could be comparable to the combustion air enclosure of claim 38. Further, the glass panels 120 are secured to those panels (e.g., panel 114) that define a combustion chamber in which combustion occurs, which panels could be comparable to the combustion chamber enclosure of claim 38. The glass panel 122 is not secured to the panels (e.g., panels 114, 120) defining the combustion chamber enclosure. Therefore, Hawkinson fails to disclose "securing the glass panel to the combustion chamber enclosure with the combustion air enclosure positioned therebetween," as required by claim 38.

### § 103 Rejections

Claims 17 and 18 were rejected under 35 U.S.C. § 102(b) as anticipated by, or in the alternative under 35 U.S.C. § 103(a) as being obvious over Cakebread (US 6,138,667) in view of Blount (US 6,378,516). Applicants respectfully traverse this rejection. However, in an effort to expedite allowance of this application, Applicants have amended claim 29 to include the allowable limitations of claim 22. Therefore, this rejection is moot. Applicants do not concede the correctness of this rejection.

Claim 23 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Cakebread and Blount and further in view of Buffington (US 2003/0019490). Applicants respectfully traverse this rejection. As noted above, claim 17 has been amended to include the allowable subject matter of claim 22. Therefore, claim 23 is allowable for at least the reason it is dependent upon an allowable base claim. Applicants do not concede the correctness of this rejection.

Claims 24-26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cakebread and Blount and further in view of Lyons (US 6,170, 481). Applicants respectfully traverse this rejection. As noted above, claim 17 has been amended to include allowable subject matter. Therefore, claims 24-26 are allowable for at least the reason they are dependent upon an allowable base claim. Applicants do not concede the correctness of this rejection.

Claim 31 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Wade. Applicants respectfully traverse this rejection. As discussed above, claim 29 has been amended to include the allowable limitations of claim 37. Therefore, claim 31 is allowable for at least the reason it is dependent upon an allowable base claim. Applicants do not concede the correctness of this rejection.

Claims 35 and 36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wade in view of Lyons. Applicants respectfully traverse this rejection. As discussed above, claim 29 has been amended to include the allowable limitations of claim 37. Therefore, claims 35 and 36 are allowable for at least the reason they are dependent upon an allowable base claim. Applicants do not concede the correctness of this rejection.

Claims 39-43 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cakebread in view of Peterson (US 4,913,131). Applicants respectfully traverse this rejection.

Cakebread discloses a typical direct vent fireplace construction that includes an outer casing 12, a firebox 22 and a coaxial exhaust and air intake system 48, 42. A glass door assembly 40 closes off the front of the firebox 22 and is coplanar with a front panel of the casing 12 (see Figures 2 and 3 of Cakebread). The door assembly 40 includes a sheet of glass 92 mounted within a metal frame or extrusion 94. The frame 94 includes legs 98, 100, 102, 104. The frame 94 is exposed after the door assembly 40 and grills 36, 38 are mounted to the firebox 22 and casing 12.

Peterson discloses a plurality of surround members 43, 44, 45, 46, 51 and louvers 47, 48 that cover portions of a fireplace front 30. The fireplace also includes door sections 35, 36 having frame portions across the top and bottom ends of the doors. None of the surround pieces 43, 44, 45, 46, 51 or louvers 47, 48 cover the frame portions of the doors from view. Neither Peterson nor Cakebread discloses or suggests a "surround member adapted and configured to be positioned between the front panel of the outer enclosure and the glass panel to cover the glass frame from view," as required by claim 39. Even if the surround pieces of Peterson were added to fireplace disclosed by Cakebread, there is no teaching or suggestion by either reference to cover the frame 94 of Cakebread from viewing. Therefore, Cakebread and Peterson fail to disclose or suggest every limitation of claim 39 and the claims that depend from it.

Further to the above, neither Cakebread nor Peterson discloses or suggests gaining access to a space between an interior of the outer enclosure and an outer surface of the combustion chamber enclosure by removing/adjusting side panels of a surround, as required by claim 40. Access to the space between the firebox 22 and outer casing 12 of Cakebread is possible by removing the entire glass frame assembly 40, which is assembled as a unitary body. Peterson discloses a multiple part surround that is mounted on an outer surface of a fireplace. Adjustment or removal of the surround disclosed by Peterson does not provide access to a space within the fireplace. Furthermore, surrounds as disclosed by Peterson are very different from glass panel assemblies are disclosed by Cakebread. One of skill in the art would not interchange these features of a fireplace. Therefore, claim 40 is independently allowable over Cakebread and Peterson.

Claims 44-50 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hawkinson. Applicants respectfully traverse this rejection.

Hawkinson discloses the use of an air passageway between two glass panes for the specific purpose of cooling the outer exposed glass panel. The panes are glass to provide viewing into the combustion chamber wherein a decorative flame can be seen. In one embodiment of Hawkinson, an air passageway 84 is defined between glass panes 72, 82. The panes are separated a specific distances that provides sufficient combustion air flow into the combustion chamber 62 while restricting the airflow path sufficiently to provide an air flow velocity to cool the glass panes 72, 82 (see col. 2, line 66 to col. 3, line 7 and col. 3, lines 22-33 of Hawkinson). Thus, a primary purpose of the double glass pane configuration is to ensure that the exposed outer surface of pane 82 is not excessively hot. The embodiment shown in Figure 3 of Hawkinson is merely a see-through fireplace configuration with double panes on opposing front and rear sides of the fireplace. Each of the double panes 120, 122 and associated passageway 124 has the same purpose of cooling the exposed glass pane 122, thereby reducing risk of harm, by burning, to the occupant of the room (see col. 3, lines 32-33 of Hawkinson).

Hawkinson fails to disclose or suggest "a combustion air enclosure positioned between the outer enclosure and a side and a rear panel of the combustion chamber enclosure through which no viewing of the combustion chamber is provided, the combustion air enclosure and the

combustion chamber enclosure defining an air insulative space between the combustion chamber and the outer enclosure," as required by claim 44. As explained above, the only air insulative space between side or rear panels of the fireplace disclosed by Hawkinson is the passageway 84, 124 defined between glass panes 72, 82 and 120, 122. The passageway is provided in order to cool the exposed surface through which viewing of the combustion chamber is possible. Hawkinson fails to disclose or suggest a combustion air enclosure positioned between any other side or rear panels of the combustion chamber enclosure. Further, Hawkinson fails to disclose or suggest a need to cool any of the non-exposed, non-viewing surfaces of the fireplace, which is the purpose of the passageways. Therefore, Hawkinson fails to disclose or suggest every limitation of claim 44 and the claims that depend from it.

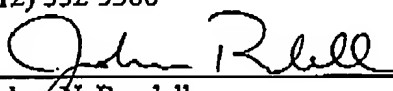
Further to the above, Applicants submit that Hawkinson fails to disclose or suggest every limitation of claim 50 for at least those reasons discussed above related to claim 38. Therefore, claim 50 is separately allowable over Hawkinson.

In view of the above, Applicants request reconsideration of the application in the form of a Notice of Allowance.

Respectfully submitted,

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